

	<i>Page</i>
3. The opinion of publicists (doctrine)	67
4. Conclusion: the thesis of the inherent revocability of declarations refuted	68
The invalidity of the purported modification in accordance with the express terms of the United States declaration	69
General conclusion concerning the note of 6 April 1984	70
The United States note of 6 April 1984 and the issue of reciprocity	70
The United States assertion that Nicaragua's declaration is inherently terminable	71
The unfounded thesis that Nicaragua has not accepted the "same" obligation as the United States	73
The thesis that the United States benefits from the right of immediate termination which (it is said) is implicit in the declaration of Nicaragua	73
The logical difficulties attending the United States conception of reciprocity	74
General conclusion on reciprocity	77
General conclusion	78
ARGUMENT OF PROFESSOR CHAYES (NICARAGUA)	80
ARGUMENT OF MR. REICHLER (NICARAGUA)	83
El Salvador, Honduras and Costa Rica are not indispensable parties	83
The Vandenberg Amendment does not preclude jurisdiction in the absence of these three States	88
ARGUMENT OF PROFESSOR BROWNLIE (NICARAGUA)	98
The Multilateral Treaty Reservation has no application	98
PLAIDOIRIE DE M. PELLET (NICARAGUA)	102
L'admissibilité de la requête	102
I. La « justiciabilité » du litige	103
II. En rendant son arrêt, la Cour exercera des fonctions proprement judiciaires	108
a) Les arrêts de la Cour, donc, ont pour vocation de fixer les droits des parties à l'avenir	111
b) L'arrêt de la Cour pourra et devra être exécuté par les parties	113
III. L'existence de négociations parallèles ne fait pas obstacle à la juridiction de la Cour	115
a) Les négociations menées dans le cadre du processus de Contadora	117
b) La compétence parallèle des organes politiques des Nations Unies	123
ARGUMENT OF PROFESSOR CHAYES (NICARAGUA)	129
The legal issues raised by Nicaragua's application are not committed to the exclusive competence of the Security Council	129
STATEMENT BY MR. ARGÜELLO GÓMEZ (NICARAGUA)	139
Submissions on behalf of the Government of Nicaragua	141

	<i>Page</i>
STATEMENT BY THE PRESIDENT	142
ARGUMENT OF MR. ROBINSON (UNITED STATES OF AMERICA)	143
Nicaragua's pre-Charter status: its non-acceptance of the Permanent Court's compulsory jurisdiction	155
The entry into force of the United Nations Charter did not subject Nicaragua to the compulsory jurisdiction of the Court	158
The necessity of founding jurisdiction on the Statute of the Court	186
Nicaragua's conduct over the past 40 years creates an estoppel barring its present effort to invoke the Court's compulsory jurisdiction	191
Conclusion	197
ARGUMENT OF MR. NORTON (UNITED STATES OF AMERICA)	199
The Multilateral Treaty Reservation to the United States declaration precludes the Court's exercise of jurisdiction over Nicaragua's claims	199
ARGUMENT OF PROFESSOR McDOUGAL (UNITED STATES OF AMERICA)	215
The Court lacks jurisdiction because the United States note of 6 April 1984 temporarily suspends Nicaragua's claims from the scope of the United States consent to the Court's jurisdiction	215
I. Declarations under Article 36 (2) are <i>sui generis</i> components of the Court's adjudicative process	217
II. The 6 April note was a valid modification of the United States 1946 Declaration with immediate effect	220
III. Reciprocity requires that the 6 April note be deemed effective as against Nicaragua, whatever its status <i>ergo omnes</i>	225
IV. The 6 April note is valid under United States law and hence effective without question under international law	227
V. The most fundamental policies in the common interest of all States require an adjudicative process based upon shared consent	230
STATEMENT BY MR. ROBINSON (UNITED STATES OF AMERICA)	232
ARGUMENT OF PROFESSOR SOHN (UNITED STATES OF AMERICA)	234
The application is inadmissible because it relates to matters which fall within the competence of the Security Council	234
ARGUMENT OF PROFESSOR MOORE (UNITED STATES OF AMERICA)	251
Inadmissibility of the request	251
The legal rights and sovereign equality of third States not before the Court	254
The Court should not interfere with regional efforts to bring ongoing hostilities to an end	258
The Court should not interfere with decisions of the Security Council or regional arrangements under Chapter VIII of the Charter	262
The Court, as the principal judicial organ of the United Nations, should respect the inherent limitations of the judicial process	265
Conclusion	270
STATEMENT BY MR. ROBINSON (UNITED STATES OF AMERICA)	272
STATEMENT BY MR. ARGÜELLO GÓMEZ (NICARAGUA)	273

CONTENTS – TABLE DES MATIÈRES

	<i>Page</i>
Oral Arguments on Jurisdiction and Admissibility — Plaidoiries sur la compétence et la recevabilité	
OPENING OF THE ORAL PROCEEDINGS	5
STATEMENT BY MR. ARGÜELLO GÓMEZ (NICARAGUA)	7
ARGUMENT OF PROFESSOR CHAYES (NICARAGUA)	13
Nicaragua must be deemed to have accepted the compulsory jurisdiction of the Court by virtue of Article 36, paragraph 5, of the Statute of the Court	13
The original understanding of Article 36, paragraph 5, with special reference to the situation in the United States	17
The jurisprudence of the Court	20
The practice under Article 36 (5)	23
The first <i>Yearbook</i> of the International Court of Justice	24
The case of the <i>Arbitral Award Made by the King of Spain on 23 December 1906</i>	26
Opinions of publicists	34
United States practice	38
ARGUMENT OF PROFESSOR BROWNLIÉ (NICARAGUA)	41
Introduction: the procedural content	41
The conduct of the Parties: recognition of the validity of Nicaragua's declaration	43
Consent to be bound as evidenced by consent	43
The legal relevance of formal defects in agreements and declarations	45
The evidence of Nicaragua's consent to the compulsory jurisdiction of the Court	46
The series of important public documents	47
The general opinion of States	52
The general opinion of publicists	53
Synthesis of the evidence	53
Conclusion: Nicaragua's consent to be bound as evidenced by conduct	54
The note of 6 April 1984 cannot modify or terminate the United States declaration of 1946	57
The note of 6 April 1984 regarded as a purported termination of the United States declaration and the substitution of a new declaration	58
The note of 6 April 1984 regarded as a purported modification of the United States declaration	59
The legal nature of declarations	59
The non-existence of a right of unilateral modification of declarations of acceptance: as a question of general principle	62
1. The principle stated	62
2. The evidence of State practice	63

	<i>Page</i>
8. Letter to Esteban Mendoza from Manley O. Hudson, dated 1 June 1956	301
9. Letter to Manley O. Hudson from Esteban Mendoza, dated 4 June 1956	302
10. Letter to Manley O. Hudson from Esteban Mendoza, dated 6 June 1956	303
11. Letter to Manley O. Hudson from Judge Jorge Fidel Durón, dated 24 August 1957	304
12. Letter to Manley O. Hudson from Jorge Fidel Durón, dated 13 September 1957	305
13. Memorandum on stationery of the Honduran Embassy, dated 4 June 1958	307
14. Letter to Charles De Visscher from Manley O. Hudson, dated 4 June 1958	307
15. Letter to Ramón Cruz from Manley O. Hudson, dated 4 June 1958	308
16. Letter to Manley O. Hudson from Ramón Cruz, dated 11 June 1958	308
<i>Exhibit C.</i> Excerpts from legal opinions of Suzanne Bastid, dated 3 August 1956, and Charles Rousseau, dated 21 June 1956, on the matter of the boundary between Nicaragua and Honduras	309
<i>Exhibit D.</i> List of United States Federal Court decisions citing treaties in force	314
<i>Exhibit E.</i> Treaty lists referred to in the speech of Professor Brownlie	315
<i>Exhibit F.</i> Congressional Record, 1 August 1946 (p. 10618)	316
 <i>Additional documents submitted by Nicaragua</i>	
Liste des traités et accords de la France, en vigueur au 1 ^{er} janvier 1982, par Marcel F. Surbiguet et Denys Wibaux, Paris, direction des journaux officiels, 1982, pp. III-V and 368-369	319
Verträge der Bundesrepublik Deutschland, Ergänzungsband, <i>Verzeichnis und Stand der Verträge</i> , I, Herausgegeben vom Auswärtigen AMT, Carl Heymanns Verlag KG, Bonn, Köln, Berlin, pp. 41 and 44	319
Sveriges Överenskommelser med Främmande Makter, 1947, Stockholm, 1948, Kumgl. Boktryckeriet, P. A. Morstedt & Söner, pp. 199-200	319
Tractatenblad van het Koninkrijk der Nederlanden, jaargang 1956 No. 1, <i>A. Titel, Overeenkomst inzake de oprichting van een Internationale Commissie voor de Internationale Opsporingsdienst, met Bijlage; Bonn, 6 juni 1955, p. 45</i>	319
 <i>Documents submitted by the United States of America</i>	
1. 7 September 1984 Draft "Contadora Act for Peace and Cooperation in Central America (Revised)". Unofficial English translation of Spanish original	320
2. Joint communiqué of the ministerial meeting of San José, Costa Rica, 29 September 1984, as contained in cable San José 7633	341
3. "Exposicion del Senor Ministro de Relaciones Exteriores al Honorable Congreso Nacional pidiendo la aprobacion de la Carta de las Naciones Unidas, el Estatuto de la Corte Internacional de Justicia y los Acuerdos Provisionales Concertados por los Gobiernos Participantes en la Conferencia de las Naciones Unidas sobre	

	<i>Page</i>
Organizacion Internacional (Managua, D.N., 2 de Julio de 1945)", in Republica de Nicaragua, <i>Memoria Presentada al Honorable Congreso Nacional Por el Secretario de Estado en el Despacho de Relaciones Exteriores, 1945</i> ("Statement of the Minister of Foreign Relations to the National Congress requesting the Approval of the United Nations Charter, the Statute of the International Court of Justice, and the Provisional Agreements Concluded by the Governments Participating in the United Nations Conference on International Organization" (Managua, 2 July 1945) in Republic of Nicaragua, <i>Memorial Presented to the National Congress by the Secretary of State in the Office of Foreign Relations, 1945</i>) (English translation of pages 139-142 provided)	345
4. Letter from Manley O. Hudson, Harvard University, Cambridge, Massachusetts, to Esteban Mendoza, Minister of Foreign Relations, Honduras, dated 14 November 1955	348
5. Letter from Manley O. Hudson to Esteban Mendoza of 16 December 1955 with attached aide-mémoire	349
6. Letter from Manley O. Hudson to Esteban Mendoza of 20 December 1955 (without attachment)	350
7. Letter from Manley O. Hudson to Esteban Mendoza of 16 January 1956	351
8. Letter from Esteban Mendoza to Manley O. Hudson of 10 February 1956 (Spanish with English translation of 11 February 1956)	352
9. Letter from Manley O. Hudson to Esteban Mendoza of 17 February 1956	353
10. Letter from Esteban Mendoza to Manley O. Hudson of 2 May 1956 (Spanish and English)	354
11. Letter from Manley O. Hudson to Esteban Mendoza of 7 May 1956	355
12. Letter from Esteban Mendoza to Manley O. Hudson of 26 May 1956 (Spanish and English)	357
13. Letter from Manley O. Hudson to Esteban Mendoza of 31 May 1956	359
14. Letter from Manley O. Hudson to Esteban Mendoza of 26 June 1956	360
15. Letter from Manley O. Hudson to Esteban Mendoza of 23 August 1956	361
16. Letter from Jorge Fidel Durón to Manley O. Hudson of 30 April 1957	362
17. Letter from Ramón E. Cruz to Manley O. Hudson of 25 June 1957	363
18. Telegram from United States Embassy Tegucigalpa to Secretary of State of 19 March 1957	365
19. Letter from Whiting Willauer, United States Ambassador to Honduras, to R. R. Rubottom, Acting Assistant Secretary of State for Inter-American Affairs, of 19 March 1957	366
20. Memorandum from the Department of State, Office of the Legal Adviser, 10 December 1946, transmitting memorandum entitled "Reference to International Court of Justice of Disputes under Trusteeship Agreement for Japanese Mandated Islands", 6 December 1946	367

	<i>Page</i>
21. "President's Power to Give Notice of Termination of US-ROC Mutual Defense Treaty", memorandum for the Secretary of State from the Legal Adviser, Department of State, 15 December 1978, as reproduced in Treaty Termination, Hearings before the Committee on Foreign Relations, United States Senate, Ninety-sixth Congress, First Session, 9, 10, and 11 April 1979	369
22. Statement of Abram Chayes, Harvard University, Cambridge, Massachusetts, Treaty Termination, Hearings before the Committee on Foreign Relations, United States Senate, Ninety-sixth Congress, First Session, 9, 10 and 11 April 1979, pp. 306-312	395
23. Questions to and answers by Abram Chayes, Treaty Termination, Hearings before the Committee on Foreign Relations, United States Senate, Ninety-sixth Congress, First Session, 9, 10 and 11 April 1979, pp. 327-333	403
24. Statement of Lawrence A. Hammond, Deputy Assistant Attorney General, Department of Justice, Treaty Termination, Hearings before the Committee on Foreign Relations, United States Senate, Ninety-sixth Congress, First Session, 9, 10 and 11 April 1979, pp. 192-196	416
25. Questions to and answers from the Legal Adviser and the Department of State, Treaty Termination, Hearings before the Committee on Foreign Relations, United States Senate, Ninety-sixth Congress, First Session, 9, 10 and 11 April 1979, pp. 197-208	418
26. Reference to International Court of Justice of disputes under Trusteeship Agreement for Japanese Mandated Islands	425
Certification	428

	<i>Page</i>
ARGUMENT OF MR. REICHLER (NICARAGUA)	274
Refutation of some new arguments about the Vandenberg Amendment	274
STATEMENT BY MR. ARGÜELLO GÓMEZ (NICARAGUA)	281
STATEMENT BY MR. ROBINSON (UNITED STATES OF AMERICA)	284
ARGUMENT OF MR. NORTON (UNITED STATES OF AMERICA)	286
The Multilateral Treaty Reservation	286
STATEMENT BY MR. ROBINSON (UNITED STATES OF AMERICA)	290
READING OF THE JUDGMENT	291

Exhibits and Documents Submitted by Nicaragua and the United States of America in Connection with the Oral Procedure on Jurisdiction and Admissibility — Documents déposés par le Nicaragua et les Etats-Unis d'Amérique aux fins de la procédure orale relative à la compétence et à la recevabilité

Exhibits submitted by Nicaragua

<i>Exhibit A.</i> Reports of Nicaragua's acceptance of Contadora Treaty and the United States reaction	295
1. "Nicaraguans Say They Would Sign Proposed Treaty", <i>New York Times</i> , 23 September 1984	295
2. "US Official Discounts Pledge by Nicaragua", <i>New York Times</i> , 24 September 1984	295
3. "US Urges Allies to Reject Contadora Plan", <i>Washington Post</i> , 30 September 1984	295
4. "W. Europeans to Aid Central Americans", <i>Washington Post</i> , 30 September 1984	295
5. "Latin Peace Plan: Why the US Balks", <i>New York Times</i> , 3 October 1984	295
6. "US Version of Contadora Draft Disputed", <i>Washington Post</i> , 3 October 1984	295
<i>Exhibit B.</i> Documents from the papers of Manley O. Hudson, Langdell Law Library, Harvard Law School, regarding <i>King of Spain</i> case	296
1. Letter to Esteban Mendoza, Minister of Foreign Relations, Honduras, from Manley O. Hudson, Harvard University, Cambridge, Massachusetts, dated 12 August 1955	296
2. Letter to Manley O. Hudson from Esteban Mendoza of 4 January 1956 (dated 4 January 1955)	297
3. Letter to Manley O. Hudson from Esteban Mendoza, dated 9 May 1956	297
4. Letter to Esteban Mendoza from Manley O. Hudson, dated 9 May 1956	298
5. Letter to Esteban Mendoza from Manley O. Hudson, dated 15 May 1956	299
6. Letter to Manley O. Hudson from Esteban Mendoza, dated 18 May 1956	299
7. Letter to Esteban Mendoza from Manley O. Hudson, dated 23 May 1956	300

INTERNATIONAL COURT OF JUSTICE
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING MILITARY AND
PARAMILITARY ACTIVITIES IN AND
AGAINST NICARAGUA**

(NICARAGUA *v.* UNITED STATES OF AMERICA)

VOLUME III

COUR INTERNATIONALE DE JUSTICE
MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE DES ACTIVITÉS MILITAIRES
ET PARAMILITAIRES AU NICARAGUA
ET CONTRE CELUI-CI**

(NICARAGUA *c.* ÉTATS-UNIS D'AMÉRIQUE)

VOLUME III

